

**ROMEO P. BUSUEGO, CATALINO F. BANEZ AND RENATO F. LIM,
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND THE
MONETARY BOARD OF THE CENTRAL BANK OF THE PHILIPPINES,
RESPONDENTS.**

G.R. No. 95326. March 11, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court seeking a reversal of the Decision[1], dated September 14, 1990, of the Court of Appeals in CA-G.R. CV No. 23656.

As culled from the records, the facts of the case are as follows:

The 16th regular examination of the books and records of the PAL Employees Savings and Loan Association, Inc. ("PESALA") was conducted from March 14 to April 16, 1988 by a team of CB examiners headed by Belinda Rodriguez. Following the said examination, several anomalies and irregularities committed by the herein petitioners; PESALA's directors and officers, were uncovered, among which are:

- Questionable investment In a multi-million peso real estate project (Pesalaville)
- Conflict of interest in the conduct of business
- Unwarranted declaration and payment of dividends
- Commission of unsound and unsafe business practices.

On July 19, 1988,, Central Bank ("CB") Supervision and Examination Section ("SES") Department IV Director Ricardo. F. Lirio sent a letter to the Board of Directors of PESALA inviting them to a conference on July 21, 1988 to discuss subject findings noted in the said 16th regular examination, but petitioners did not attend such conference.

On July 28, 1988, petitioner Renato Lim wrote the PESALA's Board of Directors explaining his side on the said examination of PESALA's records and requesting that a copy of his letter be furnished the CB, which was forthwith made by the Board.[2]

On July 29, 1988, PESALA's Board of Directors sent to Director Lirio a letter concerning the 16th regular examination of PESALA's records.

On September 9, 1988, the Monetary Board adopted and issued MB Resolution No. 805 the pertinent provisions of which are as follows:

- "1. To note the report on the examination of the PAL Employees' Savings and Loan Association, Inc. (PESALA) as of December 31, 1987, as submitted in a memorandum of the Director, Supervision and Examination Section (SES) Department IV, dated August 19, 1988;

2. To require the board of directors of PESALA to immediately inform the members of PESALA of the results of the Central Bank examination and their effects on the financial condition of the Association;

x x x

5. To include the names of Mr. Catalino Banez, Mr. Romeo Busuego and Mr. Renato Lim in the Sector's watchlist to prevent them from holding responsible positions in any institution under Central Bank supervision;

6. To require PESALA to enforce collection of the overpayment to the Vista Grande Management and Development Corporation and to require the accounting of P12.28 million unaccounted and unremitted bank loan proceeds and P3.9 million other unsupported cash disbursements from the responsible directors and officers; or to properly charge these against their respective accounts, if necessary;

7. To require the board of directors of PESALA to file civil and criminal cases against Messrs. Catalino Banez, Romeo Busuego and Renato Lim for all the misfeasance and malfeasance committed by them, as warranted by the evidence;

8. To require the board of directors of PESALA to improve the operations of the Association, correct all violations noted, and adopt internal control measures to prevent the recurrence of similar incidents as shown in Annex E of the subject memorandum of the Director, SES Department IV;"[3]

xxx xxx xxx

On January 23, 1989, petitioners filed a Petition for Injunction with Prayer for the Immediate Issuance of a Temporary Restraining Order[4] docketed as Civil Case No. Q-89-1617 before Branch 104 of the Regional Trial Court of Quezon City.

On January 26 1989, the said court issued a temporary restraining order[5] enjoining the defendant, the Monetary Board of the Central Bank, (now Banko Sentral ng Pilipinas) from including the names of petitioners in the watchlist.

On February 10, 1989, the same trial court issued a writ of preliminary injunction[6], conditioned upon the filing by petitioners of a bond in the amount of Ten Thousand (P10,000.00) Pesos each. The Monetary Board presented a Motion for Reconsideration[7] of the said Order, but the same was denied.

On September 11, 1989, the trial court handed down its Decision,[8] disposing thus:

"WHEREFORE, judgment is hereby rendered declaring Monetary Board Resolution No. 805 as void and inexistent. The writ of preliminary prohibitory injunctions issued on February 10, 1989 is deemed permanent. Costs against respondent."

The Monetary Board appealed the aforesaid Decision to the Court of Appeals which came out with a Decision[9] of reversal on September 14, 1990, the decretal portion of which is to the following effect:

"WHEREFORE, the decision appealed from is hereby reversed and another one entered dismissing the petition for injunction."

Dissatisfied with the said Decision of the Court of Appeals, petitioners have come to this Court via the present petition for review on certiorari.

On June 5, 1992, petitioners filed an "Urgent Motion for the Immediate Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction against the Secretary of Justice and the City Prosecutor of Pasay"[10] stating that several complaints were lodged against the petitioners before the Office of the City Prosecutor of Pasay City pursuant to Monetary Board Resolution No. 805; that the said complaints were dismissed by the City Prosecutor and the dismissals were appealed to the Secretary of Justice for review, some of which have been

reversed already. Petitioners prayed that a Temporary Restraining Order and/or Writ of Preliminary Injunction issue "restraining and enjoining the Secretary of Justice and the City Prosecutor of Pasay City from proceeding and taking further actions, and more specially from filing Informations in I.S. Nos.-90-1836; 90-1831; 90-1835; 90-1832; 90-1248; 90-1249; 90-3031; 90-3032; 90-1837; 90-1834, pending the final resolution of the case at bar xxx." However, in the Resolution[11] dated September 9, 1992, the court denied the said motion.

The petition poses as issues for resolution.

I

WHETHER OR NOT THE PETITIONERS WERE DEPRIVED OF THEIR RIGHT TO A NOTICE AND THE OPPORTUNITY TO BE HEARD BY THE MONETARY BOARD PRIOR TO ITS ISSUANCE OF MONETARY BOARD RESOLUTION NO. 805.

II

WHETHER OR NOT THE RESPONDENT BOARD IS LEGALLY BOUND TO OBSERVE THE ESSENTIAL REQUIREMENTS OF DUE PROCESS OF A VALID CHARGE, NOTICE AND OPPORTUNITY TO BE HEARD INsofar AS THE PETITIONERS' SUBJECT CASE IS CONCERNED.

III

WHETHER OR NOT MONETARY BOARD RESOLUTION NO. 805 IS NULL AND VOID FOR BEING VIOLATIVE OF PETITIONERS' RIGHTS TO DUE PROCESS.

With respect to the first issue, the trial court said:

"The evidence submitted preponderates in favor of petitioners. The deprivation of petitioners' rights in the Resolution undermines the constitutional guarantee of due process. Petitioners were never notified that they were being investigated, much so, they were not informed of any charges against them and were not afforded the opportunity to adduce countervailing evidence so as to deserve the punitive measures promulgated in Resolution No. 805 of the Monetary Board. xxx"[12]

The foregoing disquisition by the trial court is untenable under the facts and circumstances of the case. Petitioners were duly afforded their right to due process by the Monetary Board, it appearing that:

- Petitioners were invited by Director Lirio to a conference scheduled for July 21, 1988 to discuss the findings made in the 16th regular examination of PESALA's records. Petitioners did not attend, said conference;
- Petitioner Renato Lim's letter of July 28, 1988 to PESALA's Board of Directors, explaining his side of the controversy, was forwarded to the Monetary Board which the latter considered in adopting Monetary Board Resolution No. 805; and
- PESALA's Board of Director's letter, dated July 29, 1988, to the Monetary Board, explaining the Board's side of the controversy, was properly considered in the adoption of Monetary Board Resolution No. 805.

Petitioners therefore cannot complain of deprivation of their right to due process, as they were given ample opportunity by the Monetary Board to air their Submission and defenses as to the findings of irregularity during the said 16th regular examination. The essence of due process is to be afforded a reasonable opportunity to be heard and to submit any evidence one may have in support of his defense.[13] What is offensive to due process is the denial of the opportunity to be heard.[14] Petitioners having availed of their opportunity to present their position to the Monetary Board by their letters-explanation, they were not denied due process[15].

Petitioners cite *Ang Tibay v. CIR*[16] and assert that the following requisites of procedural due process were not observed by the Monetary Board:

- The right to a hearing, which includes the right to present one's case and submit evidence in support thereof;
- The tribunal must consider the evidence presented;
- The decision must have something to support itself;
- The evidence must be substantial;
- The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected;
- The tribunal or body or any of its judges must act or its or his own independent consideration of the law and facts of the controversy and not simply accept the view of a subordinate in arriving at a decision;
- The board or body should, in all controversial questions, render its decision in such a manner that the parties to the proceedings can know the various issues involved, and the reason for the decision rendered.

Contrary to petitioners' allegation, it appears that the requisites of procedural due process were complied with by the Monetary Board before it issued the questioned Monetary Board Resolution No. 805. Firstly, the petitioners were invited to a conference to discuss the findings gathered during the 16th regular examination of PESALA's records. (The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.[17]) Secondly, the Monetary Board considered the evidence presented. Thirdly, fourthly and fifthly, Monetary Board Resolution No. 805 was adopted on the basis of said findings unearthed during the 16th regular examination of PESALA's records and derived from the letter-comments submitted by the parties. Sixthly, the members of the Monetary Board acted independently on their own in issuing subject Resolution, placing reliance on the said findings made during the 16th regular examination. Lastly, the reason for the issuance of Monetary Board Resolution No. 805 is readily apparent, which is to prevent further irregularities from being committed and to prosecute the officials responsible therefor.

With respect to the second issue, there is tenability in petitioners' contention that the Monetary Board, as an administrative agency, is legally bound to observe due process, although they are free from the rigidity of certain procedural requirements. As held in *Adamson and Adamson, Inc. v. Amores*[18]:

"While administrative tribunals exercising quasi-judicial functions are free from the rigidity of certain procedural requirements they are bound by law and practice to observe the fundamental and essential requirements of due process in justiciable cases presented before them. However, the standard of due process that must be met in administrative tribunals allows a certain latitude as long as the element of fairness is not ignored. Hence, there is no denial of due process where records show that hearings were held with prior notice to adverse parties. But even in the absence of previous notice, there is no denial of procedural due, process as long as the parties are given the opportunity to be heard."

Even Section 28, (c) and (d), of Republic Act No. 3779 ("RA 3779") delineating the powers of the Monetary Board over savings and loan associations, require observance of due process in the exercise of its powers:

"x x x

(c) To conduct at least once every year, and whenever necessary, any inspection, examination or investigation of the books, and records, business affairs, administration, and financial condition of any savings and loan association with or without prior notice but always with fairness and reasonable opportunity for the association or any of its officials to give their side of the case. x x x

(d) After proper notice and hearing, to suspend a savings and loan association for violation of law, for unsafe and unsound practices or for reason of insolvency. x x x

x x x.

(f) To decide, after appropriate notice and hearings any controversy as to the rights or obligations of the savings and loan association, its directors, officers, stockholders and members under its charter, and, by order, to enforce the same;

x x x" (italics supplied)

Anent the third issue, petitioners theorize that Monetary Board Resolution No. 805 is null and void for being violative of petitioners' right to due process. To support their stance, they cite the trial court's ruling, to wit:

"A reading of Monetary Board Resolution No. 805 discloses that it imposes administrative sanctions against petitioners. In fact, it does not only penalize petitioners by including them in the watchlist to prevent them from holding responsible positions in any institution under Central Bank supervision,' it mandates the PESALA Board of Directors as well to file Civil and Criminal charges against them 'for all the misfeasance and malfeasance committed by them, as warranted by the evidence.' Monetary Board Resolution No. 805 virtually deprives petitioners their respective gainful employment, and at the same time marks them for judicial prosecution. The crucial question here is that were petitioners afforded due process in the investigations conducted which prompted the issuance of Monetary Board Resolution No. 805?

x x x Although the Monetary Board is free from the rigidity of certain procedural requirements, it failed 'to observe the essential requirement of due process' (Adamson and Adamson, Inc. v. Amores, 152 SCRA 237) specifically its failure to afford petitioners the opportunity to be heard. In short, there is a clear showing of arbitrariness resulting in an irreparable injury against petitioners as the Resolution certainly affects their 'life, liberty and property.'

Monetary Board Resolution No. 805 Violates basic and essential requirements. It must therefore be, as it is hereby, declared, as void and inexistent because among other things, it openly derogates the fundamental rights of petitioners."

Petitioners opine that with the issuance of Monetary Board Resolution No. 805, "they are now barred from being elected or designated as officers again of PESALA, and are likewise prevented from future engagements or employments in all institutions under the supervision of the Central Bank thereby virtually depriving them of the opportunity to seek employments in the field which they can excel and are best fitted." According to them, the Monetary Board is not vested with "the authority to disqualify persons from occupying positions in institutions under the supervision of the Central Bank without proper notice and hearing" nor is it vested with authority "to file civil and criminal cases against its officers/directors for suspected fraudulent acts."

Petitioners' contentions are untenable. It must be remembered that the Central Bank of the Philippines (now Bangko Sentral ng Pilipinas), through the Monetary Board, is the government agency charged with the responsibility of administering the monetary, banking and credit system of the country[19] and is granted the power of supervision and examination over banks and non-bank financial institutions performing quasi-banking functions, of which savings and loan associations, such as PESALA, form part of[20].

The special law governing savings and loan association is Republic Act No. 3779, as amended, otherwise known as the "Savings and Loan Association Act." Said law authorizes the Monetary Board to conduct regular yearly examinations of the books and records of savings and loan associations, to suspend, a savings and loan association for violation of law, to decide any controversy over the obligations and duties of directors and officers, and to take remedial measures, among others. Section 28 of Rep. Act No. 3779, reads:

"SEC. 28. Supervisory powers over savings and loan associations. - In addition to whatever powers have been conferred by the foregoing provisions, the Monetary Board shall have the power to exercise the following:

x x x

(c) To conduct at least once every year, and whenever- necessary, any inspection, examination or investigation of the books and records, business affairs, administration, and financial condition of any savings and loan association with or without prior notice but always with fairness and reasonable opportunity for the association or any of its officials to give their side of the case. Whenever an inspection, examination or investigation is conducted under this grant of power, the person authorized to do so may seize books and records and keep them under his custody after giving proper receipts therefor; may make any marking or notation on any paper, record, document or book to show that it has been examined and verified and may padlock or seal shelves, vaults, safes, receptacles or similar containers and prohibit the opening thereof without first securing authority therefor, for as long as may be necessary in connection with the investigation or examination being conducted. The official of the Central Bank in charge of savings and loan associations and his deputies are hereby authorized to administer oaths to any director, officer or employee of any association under the supervision of the Monetary Board;

x x x

(d) After proper notice and hearing, to suspend a savings and loan association for violation of law, for unsafe and unsound practices or for reason of insolvency. The Monetary Board may likewise, upon the proof that a savings and loan association or its board or directors or officers are conducting and managing its affairs in a manner contrary to laws, orders, instructions, rules and regulations promulgated by the Monetary Board or in a manner substantially prejudicial to the interest of the government, depositors or creditor, take over the management of the savings and loan association after due hearing, until a new board of directors and officers are elected and qualified without prejudice to the prosecution of the persons responsible for such violations. The management by the Monetary Board shall be without expense to the savings and loan association, except such as is actually necessary for its operation, pending the election and qualification of a new board of directors and officers to take the place of those responsible for the violation or acts contrary to the interest of the government, depositors or creditors;

x x x

(f) To decide, after appropriate notice and hearings any controversy as to the rights or obligations of the savings and loan association, its directors, officers, stockholders and members under its charter, and, by order, to enforce the same;

x x x

(l) To conduct such investigations, take such remedial measures, exercise all powers which are now or may hereafter be conferred upon it by Republic Act Numbered Two Hundred sixty-five in the enforcement of this legislation, and impose upon associations, whether stock or noti-stock their directors and/or officers administrative sanctions under Sections 34-A or 34-B of Republic Act Two Hundred sixty-five, as amended."

From the foregoing, it is gleanable that the Central Bank, through the Monetary Board, is empowered to conduct investigations and examine the records of savings and loan associations. If any irregularity is discovered in the process, the Monetary Board may impose appropriate sanctions, such as suspending the offender from holding office or from being employed with the Central Bank, or placing the names of the offenders in a watchlist.

The requirement of prior notice is also relaxed under Section 28 (c) of RA 3779 as investigations or examinations may be conducted with or without prior notice "but always with fairness and reasonable opportunity for the association or any of its officials to give their side." As may be gathered from the records, the said requirement was properly complied with by the respondent Monetary Board.

We sustain the ruling of the Court of Appeals that petitioners' suspension was only preventive in nature and therefore, no notice or, hearing was necessary. Until such time that the petitioners have proved their innocence, they may be preventively suspended from holding office so as not to influence the conduct of investigation, and to

prevent the commission of further irregularities.

Neither were petitioners deprived of their lawful calling as they are free to look for another employment so long as the agency or company involved is not subject to Central Bank control and supervision. Petitioners can still practise their profession or engage in business as long as these are not within the ambit of Monetary Board Resolution No. 805.

All things studiedly considered, the court upholds the validity of Monetary Board Resolution No. 805 and affirms the decision of the respondent court.

WHEREFORE, the petition is DENIED, and the assailed Decision dated September 14, 1990 of the Court of Appeals AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Romero, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Penned by Associate Justice Jose A.R. Melo and concurred by Associate Justices Antonio M. Martinez and Nicolas P. Lapena, Jr.

[2] See Rollo, p. 248.

[3] Rollo, pp. 39-40.

[4] Annex "B", Petition for Review, Rollo, pp. 33-38.

[5] Annex "C", Petition for Review, Rollo, p. 41.

[6] Annex "G", Petition for Review, Rollo, p. 65.

[7] Annex "H", Petition for Review, Rollo, pp. 63-72.

[8] Annex "L", Petition for Review, Rollo, pp. 122-124.

[9] Annex "A", Petition for Review, Rollo, pp. 28-32.

[10] Rollo, pp. 334-360

[11] Rollo, pp. 405-406.

[12] Rollo, p. 124.

[13] *Salonga v. Court of Appeals*, 269 SCRA 534.

[14] *Garments and Textile Export Board v. Court of Appeals, et al.*, 268 SCRA 258.

[15] See *Naguiat v. National Labor Relations Commission*, 269 SCRA 564.

[16] 69 Phil. 635.

[17] *Pono v. National Labor Relations Commission*, 275 SCRA 611.

[18] 152 SCRA 237, 250.**[19] Section 2, Republic Act 265:**

"Responsibilities and objectives. - It shall be the responsibility of the Central Bank of the Philippines to administer the monetary and banking system of the Republic. It shall be the duty of the Central bank to use the powers granted to it under this Act to achieve the following objectives:

- (a) To maintain monetary stability in the Philippines;
- (b) To preserve the international value of the peso and the convertibility of the peso into other freely convertible currencies; and
- (c) To promote a rising level of production, employment and real income in the Philippines."

Section 5, Republic Act 265:

"Composition of the Monetary Board - The powers and functions of the Central Bank shall be exercised by a Monetary Board, which shall be composed of seven members as follows:

xxx."

[20] Section 25, Republic Act 265:

"Creation of the Department - In order to assure the observance of this Act and of other pertinent laws, and of the rules and regulations of the Monetary Board, the Central Bank shall have a Department of Supervision and Examination which shall be charged with the supervision and periodic examination of all banking institutions operating in the Philippines, including all government credit institutions. The Department of Supervision and Examination shall discharge its responsibilities in accordance with the instructions of the Monetary Board. The Chief of the department shall be known as the Superintendent of Banks.

The Superintendent of Banks and the examiners of the Department of Supervision and Examination are hereby authorized to administer oaths to any director, officer, or employee of any institution under the supervision of the department and to compel the presentation of all books, documents, papers or records necessary in his or their judgment to ascertain the facts relative to the true condition of any institution."

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